

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
NOV - 9 2007
Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M.)	File No. EB-06-IH-2112
AUSTIN, and JAY R. BISHOP)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION)	FRN No. 0003769049
SYSTEMS, INC.)	
)	
Licensee of Various Site-by-Site Licenses in)	
the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses)	
in the 800 MHz Specialized Mobile Radio)	
Service)	

To: The Honorable Judge Arthur I. Steinberg

ENFORCEMENT BUREAU'S
REQUEST FOR LEAVE TO FILE MOTION FOR RULING

1. Pursuant to Sections 1.45 and 1.246 of the Commission's Rules, 47 C.F.R. §§ 1.45 and 1.246, the Enforcement Bureau ("Bureau") seeks leave to file the attached Motion for Ruling relating to objections interposed by Preferred Communication Systems, Inc. ("PCSI") to the Bureau's Request for Admission of Facts and Genuineness of Documents (the "Request"). In support hereof, the Bureau states as follows:

2. On September 5, 2007, the Bureau filed the Request in the above-captioned proceeding. On or about September 28, 2007, PCSI objected to the Request alleging that one request for admission was irrelevant and lacking foundation, and that another did not specify a time frame. During the September 12, 2007 Prehearing

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Conference, the Presiding Judge instructed the parties that a “[s]erious and genuine effort should be made to reach a compromise with each other if there’s a dispute [with respect to the Request].” Tr. P. 21. The Presiding Judge further instructed the parties that “any request for a ruling on a discovery matter has to include a certification that counsel for the parties made a good faith attempt to resolve the dispute but could not do so.” Tr. P. 21. While the Bureau is mindful that “Requests for Admission are not discovery requests,” Tr. P. 30, the Bureau has endeavored to apply the spirit of these instructions by attempting to informally resolve disputes with PCSI before filing the instant request for relief.

3. Notably, on September 20, 2007, the Bureau agreed to extend PCSI’s time to respond to the Request until September 28, 2007. PCSI responded on September 28, 2007.¹

4. On October 4, 2007, the Bureau contacted Robert Keller, counsel for PCSI, by telephone, and left a voice message requesting him to call the Bureau’s counsel to resolve certain issues concerning the Request.² The Bureau received no response to this voice message.

¹ See Response by Preferred Communication Systems, Inc. to Request for Admission of Facts and Genuineness of Documents, filed on Sept. 28, 2007 (“Response”).

² Gary Oshinsky and Anjali Singh, counsel for the Bureau, were both present at the time of the call.

5. On October 9, 2007, the Bureau contacted both Keller and his co-counsel, David Kaufman, via email. The Bureau, following up on the October 4 voice message, asked counsel to contact the Bureau's attorneys, explaining that the Request was "aimed towards the end of resolving possible conflicts." The Bureau specifically outlined its grounds for maintaining that PCSI should respond to the admissions requests to which it objected:

Regarding #80, we believe that request #78-79, which inquire about operating capital and whether PCSI has completed construction on its licenses, have set forth the appropriate foundation, and that they are relevant to our ascertaining whether PCSI has timely met construction and operation requirements on its licenses, and if not, what the cause may be . . . Regarding #81, in our view, there is an implied timeline, running to the current date.

The Bureau asked counsel whether PCSI could admit to the Request at issue, given these additional explanations.

6. On October 22, 2007, counsel for PCSI, Preferred Acquisitions, Inc. ("PAI"), and Charles M. Austin contacted Bureau's counsel via email to request an extension of time to file their responses to unrelated filings. On October 23, 2007, the Bureau granted such extensions and reminded counsel of the Bureau's outstanding inquiries (of October 4 and 9) concerning PCSI's responses to the Bureau's Request. After this third attempt at contact, on October 24, 2007, PCSI's counsel contacted the Bureau and indicated that it would respond regarding its positions on the objections on or before October 26, 2007.

7. On October 26, 2007, PCSI's counsel informed the Bureau that PCSI maintained its earlier objections, asserting that "the question of whether Preferred has funds today, after the FCC gutted the value of the licenses through the *Rebanding*

Rulemaking decisions and after the FCC through a cloud over Preferred by issuing the HDO herein, is totally irrelevant under precedent.” PCSI accordingly asked the Bureau to withdraw the subject admissions requests. The Bureau declined to withdraw the requests.


8. Based on the discussion above, to the extent required, the Bureau hereby certifies that its counsel has made a good faith effort to informally resolve the dispute outlined in this pleading and its attachment and has been unable to do so.³

9. Section 1.246(d) of the Commission’s Rules states: “[w]ritten objections to the requested admissions may be ruled upon by the presiding officer without additional pleadings.” The Bureau respectfully requests leave to file the attached Request for Ruling, however, because of the need to: (1) detail the cooperative efforts in which the Bureau has engaged in order to resolve the disputes prompting this request; and (2) request the Presiding Judge’s rulings on certain objections provided by PCSI because, despite such cooperative efforts, the parties involved have reached an impasse.


10. For the reasons explained in the attached pleading, the Bureau respectfully submits the admissions requests at issue are relevant to this proceeding. The Bureau also submits that ruling on such objections will serve the public interest by eliminating the need for inquiry at hearing. Accordingly, the Bureau respectfully requests that the Presiding Judge consider the attached Motion for Ruling and issue an order requiring PCSI to supplement its responses with additional answers in lieu of its earlier objections.

³ See *Pendleton C. Waugh, et al.*, EB Docket No. 07-147, Revised Transcript at 21:17 – 21:21 (Sept. 12, 2007). In doing so, the Bureau recognizes that the Presiding Administrative Law Judge may not require such a certification for disputes relating to requests for admission, but is so providing out of an abundance of caution.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



Gary A. Oshinsky
Attorney, Investigations and Hearings Division



Anjali K. Singh
Attorney, Investigations and Hearings Division

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November 9, 2007

ATTACHMENT

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Licensee of Various Economic Area Licenses)	
in the 800 MHz Specialized Mobile Radio)	
Service)	

To: The Honorable Judge Arthur I. Steinberg

ENFORCEMENT BUREAU'S MOTION FOR RULING

1. Pursuant to Sections 1.45 and 1.246 of the Commission's Rules, 47 C.F.R. §§ 1.45 and 1.246, the Enforcement Bureau ("Bureau") hereby requests that the Presiding Judge issue an order directing Preferred Communication Systems, Inc. ("PCSI") to supplement its responses to the Bureau's Request for Admission of Facts and Genuineness of Documents filed by the Bureau. In support hereof, the Bureau states as follows:

2. On September 5, 2007, the Bureau filed its "Request for Admission of Facts and Genuineness of Documents to Preferred Communication Systems, Inc."

(hereinafter "Request") in the above-captioned proceeding.¹ PCSI responded on September 28, 2007.² As described more fully below, PCSI objected to two of the admissions requests, both of which go to the heart of allegations contained in the Order to Show Cause ("OSC")³ namely: (a) PCSI's discontinuation of operation of its licenses; (b) PCSI's ability to operate the licenses from the date of acquisition; and (c) possible misrepresentations in the Waiver Request filed by Preferred Acquisitions, Inc. ("PAI"), its subsidiary.⁴ Accordingly, the Bureau respectfully submits that PCSI's objections have no merit and requests that PCSI be ordered to supplement its response by providing answers to admissions requests Nos. 80-81.

3. The admissions request No. 80 asked PCSI to admit that: "To date, PCSI does not hold funds or funding commitments necessary to complete construction of facilities for each of the licenses listed in item numbers 1 through 77 above." PCSI responded: "Objection, irrelevant and no foundation." These objections are meritless because the inquiries relate to specific issues raised by the OSC, namely PCSI licenses, PCSI's efforts to raise capital in order to operate the licenses, and whether construction deadlines applicable to the licenses were met.⁵ This admissions request attempts to establish whether PCSI has failed to meet any applicable construction deadlines due to a lack of adequate funding. This Request is directly relevant to the issues of whether PCSI has been operating its licenses and its financial ability to do so. Additionally, the Request

¹ See Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents to Preferred Communication Systems, Inc., filed on Sept. 5, 2007 ("Request").

² See Response by Preferred Communication Systems, Inc. to Request for Admission of Facts and Genuineness of Documents, filed on Sept. 28, 2007.

³ See *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 22 FCC Rcd. 13363 (2007).

⁴ See *id.* at 13378-13380, 13385-13386 (setting for hearing whether PAI misrepresented its operational readiness in its pending request for waiver of construction deadlines applicable to its licenses and whether PCSI discontinued operation of its licenses for over one year without approval from the Commission).

bears on the issue of whether PCSI, as the parent company of PAI, has sufficient capital to support operation of PAI's licenses, a requirement of the PAI waiver request.

Accordingly, the admissions request provides a clear nexus to a determination of issues specifically addressed in the OSC.

4. The admissions request No. 81 asked PCSI to admit that: "To date, PCSI has not secured the funding necessary to continuously operate facilities for each of the licenses listed in item numbers 1 through 77 above." PCSI responded, "Objection, no time frame specified." The Bureau specifically prefaced the Request with the phrase "to date," setting the relevant time frame from the date of acquisition in 1998, until the date PCSI submitted belatedly its response to the Request.⁶ After the Bureau noted this clarification, PCSI substituted a relevance objection. Such objection was not preserved and is untimely. Furthermore, the Bureau respectfully submits that the admissions requests are clearly relevant to issues designated for hearing. Admissions request No. 81 seeks to ascertain PCSI's financial ability to operate its licenses, the dates of operation, and the cause, if any, for discontinuation.

5. In addition to the foregoing, admissions requests No. 80 and 81 both bear on the issue of whether PAI misrepresented its operational readiness.⁷ PCSI's financial viability directly bears on its capacity to support the operations of its subsidiary, PAI, therefore such admissions requests are clearly relevant and PCSI should be ordered to respond.

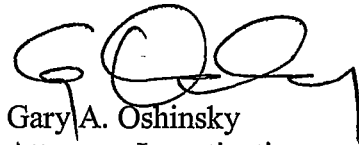
6. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge rule that PCSI's objections on the Bureau's admissions requests Nos. 80

⁵ See PCSI Request at 2-6.

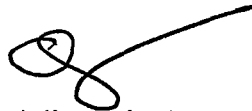
⁶ See PCSI Request at 6.

and 81 are without merit and order PCSI to supplement its Responses with answers to those admissions requests within 5 calendar days of such Order.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



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⁷ See *Pendleton C. Waugh, et al.*, 22 FCC Rcd 13363, 13369 (2007) (citing 47 C.F.R. § 90.685).

CERTIFICATE OF SERVICE

Kerri Johnson a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 9th day of November 2007, sent by first class United States mail or electronic mail, as noted, copies of the foregoing "Enforcement Bureau's Request for Leave to File Request for Ruling and Request for Ruling" to:

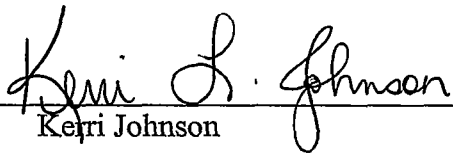
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